(6)

Supreme Court, U.S.
FILED
MAY 9 2003
OFFICE OF THE CLERK

No. 02-39

IN THE

Supreme Court of the United States

MICREL, INC.,

Petitioner,

v.

LINEAR TECHNOLOGY CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENT

ROBERT C. MORGAN
FISH & NEAVE
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

NORMAN H. BEAMER
Counsel of Record
MARK D. ROWLAND
GABRIELLE E. HIGGINS
PATRICIA E. CAMPBELL
FISH & NEAVE
525 University Avenue
Palo Alto, California 94301
(650) 617-4000

Attorneys for Respondent

180762

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

20 pp

TABLE OF CONTENTS

Page

Table of Cited Authorities ii

Supplemental Brief for Respondent 1

Conclusion 10

Appendix 1a

TABLE OF CITED AUTHORITIES

Page

Cases:

Brasseler, U.S.A. I, L.P. v. Stryker Sales Corp.,
182 F.3d 888 (Fed. Cir. 1999) 3

Consol. Fruit-Jar Co. v. Wright,
94 U.S. 92 (1876) 3

Eaton Corp. v. Parker-Hannifin Corp.,
243 F. Supp. 2d 77 (D. Del. 2003) 3-4

Group One, Ltd. v. Hallmark Cards, Inc.,
254 F.3d 1041 (Fed. Cir. 2001),
cert. denied, 534 U.S. 1127 (2002) ..... *passim*

In re Caveney,
761 F.2d 671 (Fed. Cir. 1985) 2, 3

Intel Corp. v. Int'l Trade Comm'n,
946 F.2d 821 (Fed. Cir. 1991) 2

Klocek v. Gateway, Inc.,
104 F. Supp. 2d 1332 (D. Kan. 2000) 8

Kock v. Quaker Oats Co.,
681 F.2d 649 (9th Cir. 1982) 7

Lacks Indus., Inc. v.
McKechnie Vehicle Components USA, Inc.,
322 F.3d 1335 (Fed. Cir. 2003) 3, 4, 6

Pennock v. Dialogue,
27 U.S. 1 (1829) 3

Cited Authorities

Page

Pfaff v. Wells Elecs., Inc.,
525 U.S. 55 (1998) ..... *passim*

RCA Corp. v. Data General Corp.,
887 F.2d 1056 (Fed. Cir. 1989) 3, 6

Rhenalu v. Alcoa, Inc.,
224 F. Supp. 2d 773 (D. Del. 2002) 4

UMC Elecs. Co. v. United States,
816 F.2d 647 (Fed. Cir. 1987) 3, 6

Statutes:

35 U.S.C. § 102(b) 1, 2, 7, 9

35 U.S.C. § 122 8

Miscellaneous:

P.D. Sabido, *Group One, Ltd. v. Hallmark Cards, Inc.: the § 102(b) On-Sale Bar Bright-Line Test of Pfaff v. Wells Electronics, Inc. Just Got Brighter*, 6 J. SMALL & EMERGING BUS. L. 583 (Fall 2001) 7

SUPPLEMENTAL BRIEF FOR RESPONDENT

1. Notwithstanding the assertions in Petitioner Micrel, Inc.'s Supplemental Brief to the contrary, the Solicitor General's *amicus curiae* submission solidly supports Respondent LTC's Opposition to Micrel's Petition For A Writ Of Certiorari. As this Court has done for 34 out the last 46 matters, including four out of the last five patent matters, in which the Solicitor General has participated as *amicus curiae* since 1999 (*see* App., *infra*), it is submitted that this Court should follow the Solicitor General's recommendations in this case as well. The Solicitor General authoritatively bolsters LTC's position that no sound basis exists for granting Micrel's petition for writ of certiorari.

First, this is not, as Micrel now argues, a case in which the patentee issued an "invitation to make offers." (Supp. Br. 2). The "blitzkrieg" of pre-release activity cited by Micrel largely involved activities and communications internal to LTC and its sales representatives as LTC prepared its sales force for future introduction of a new product. (Pet. App. 3a, 4a, 11a-17a). None of the pre-release activity constituted an invitation to potential customers to make offers, and none of the activity was found to have caused submission of any purchase orders before the critical date. The only purchase orders received by LTC prior to the critical date were unsolicited orders from some of LTC's European distributors, which LTC did not accept until after the critical date. (Pet. App. 17a-23a).

The Federal Circuit's decision in this case, as in *Group One, Ltd. v. Hallmark Cards, Inc.*, 254 F.3d 1041, 1048 (Fed. Cir. 2001), *cert. denied*, 534 U.S. 1127 (2002), is in accord with the plain meaning of the applicable statute (35 U.S.C. § 102(b)), and directly follows this Court's precedent of *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 67 (1998). In *Pfaff*, this Court specifically held that "the on-sale bar applies" only if, *inter alia*, there is "a commercial offer for sale." In setting down this unequivocal rule, this Court emphasized that the controlling

policies were: (i) to provide a "period of limitation which should be certain" that (ii) "finds . . . support in the text of the statute." 525 U.S. at 65-66. Micrel's proffered "commercial marketing" standard flies in the face of these policies, having no basis in the plain meaning of the statute, and fostering uncertain debates over vague policy considerations each and every time a Court, a Patent Office Examiner, a patent practitioner or an inventor inquires, "*What is [or was] the deadline for filing the patent application?*"

As the Solicitor General corroborates, the decision of the Federal Circuit in this case is not in conflict with any decision of this Court, with any other Federal Circuit decision, or with any decision of any other Court of Appeals. Moreover, the Solicitor General further corroborates that *Group One* has not resulted in the dramatic change in the law or the approach to the on-sale bar that Micrel suggests. As has always been the law since the on-sale bar was enacted, absent an actual sale, only a commercial offer for sale which the other party could make into a binding contract by simple acceptance can trigger the on-sale bar of Section 102(b) of the Patent Law. The Federal Circuit's rejection of its former "totality of the circumstances" ***articulation*** of the on-sale bar test did nothing to change the practical application of that test in actual cases, but merely cast off superfluous, irrelevant, nonstatutory ***wording*** from the standard.[1]

---

1. The ineffectiveness of a "totality of the circumstances" analysis to the on-sale bar is in stark contrast to the actual holdings of the cases. For example, from the inception of the statutory on-sale bar, the Courts have uniformly held that even a single, isolated, confidential, unaccepted offer can trigger the on-sale bar. *Intel Corp. v. Int'l Trade Comm'n*, 946 F.2d 821, 830 (Fed. Cir. 1991); *In re Caveney*, 761 F.2d 671, 676 (Fed. Cir. 1985). Yet a "totality of the circumstances" test might not yield that result as a general rule, because such an offer discloses nothing to the public and is of no actual commercial benefit to the patent owner.

Pfaff, as well as *Group One* and this case, are only the most recent in an unbroken line of cases in this Court and the Federal Circuit supporting this Court's rule in *Pfaff* that a commercial offer is necessary to trigger the on-sale bar. *Consol. Fruit-Jar Co. v. Wright*, 94 U.S. 92, 94 (1876) (holding that an inventor will trigger the on-sale bar "if he constructs [the invention] and vends it to others to use"); *Pennock v. Dialogue*, 27 U.S. 1, 23 (1829) (holding that an inventor will trigger the on-sale bar "if he suffer the thing invented to go into public use, or to be publicly sold for use"); *UMC Elecs. Co. v. United States*, 816 F.2d 647, 656 (Fed. Cir. 1987) (held: only a "definite sale or offer to sell" raised the on-sale bar); *RCA Corp. v. Data General Corp.*, 887 F.2d 1056, 1062 (Fed. Cir. 1989) ("where there is no sale, a definite offer to sell is an essential requirement of the on-sale bar"). The Federal Circuit has repeatedly used contract law principles in evaluating whether conduct gives rise to the on-sale bar. *See, e.g., Brasseler, U.S.A. I., L.P. v. Stryker Sales Corp.*, 182 F.3d 888 (Fed. Cir. 1999) (holding that a sale in the "commercial law sense" is required to trigger the bar); *In re Caveney*, 761 F.2d 671, 676 (Fed. Cir. 1985) (holding that "a sale is a contract between parties to give and to pass rights of property for consideration"). As a result, the Federal Circuit's holding in *Group One* and here straightforwardly provides further clarity and refinement to the test announced by this Court in *Pfaff*, requiring a "commercial offer for sale" to trigger the on-sale bar.

Since LTC filed its Brief in Opposition in September 2002, the Federal Circuit has continued to correctly apply the commercial offer for sale test to determine whether there has been a sale or offer for sale sufficient to trigger the on-sale bar. *Lacks Indus., Inc. v. McKechnie Vehicle Components USA, Inc.*, 322 F.3d 1335, 1347-49 (Fed. Cir. 2003) (remand to District Court where the Special Master erroneously relied on a standard requiring something less than a formal offer under contract law principles); *Eaton Corp. v. Parker-Hannifin Corp.*, 243 F. Supp.

2d 77, 83-84 (D. Del. 2003) (summary judgment denied where movant failed to show no genuine issues of fact re whether there was a commercial offer for sale); *Rhenalu v. Alcoa, Inc.*, 224 F. Supp. 2d 773, 801-804 (D. Del. 2002) (finding no commercial offer for sale of the patented invention). The test is clear, and it is being consistently applied by the Courts to determine whether the on-sale bar has been invoked.

2. In its Supplemental Brief, Micrel erroneously characterizes the position of the Solicitor General as in effect supporting Micrel's petition for certiorari. Micrel asserts that the Solicitor General "affirmatively rejects most of respondent's arguments," and "[d]isagree[s] markedly with respondent." (Supp. Br. 1, 4). Micrel's characterization of the Solicitor General's brief as only reluctantly supporting LTC's position is without basis, and appears to be a thinly veiled excuse for re-briefing its Petition via a "supplemental" brief.

Perhaps inspired by "*amicus curiae*" McKechnie (who, unlike the Solicitor General, has a vested interest in seeing the Petition granted), Micrel cites *Lacks Indus. v. McKechnie Vehicle Components USA*, 322 F.3d 1335 (2003) as somehow constituting "internal criticism" by that Panel of the *Group One* decision and the decision in this case. (Supp. Br. 3). According to Micrel, *Lacks* in effect is an admission by the Federal Circuit that this Court in *Pfaff* did not expound upon the requirement of a "commercial offer for sale." *Id.* To the contrary, in *Lacks* the Federal Circuit panel reaffirmed and supported the holding in *Group One* and this case as to the binding effect of this Court's decision in *Pfaff* (322 F.3d at 1347-48):

> A two-prong test governs the application of the on-sale bar: "First, the product must be the subject of a commercial offer for sale. . . . Second, the invention must be ready for patenting." *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 67, 119 S. Ct. 304, 142 L. Ed. 2d 261 (1998).

* * *

> [T]he Supreme Court swept away the "totality of circumstances" test in *Pfaff*, 525 U.S. at 67, 119 S. Ct. 304, replacing it with the two-prong test recited above. . . .
>
> In *Group One* we held that "[o]nly an offer which rises to the level of a commercial offer for sale, one which the other party could make into a binding contract by simple acceptance (assuming consideration), constitutes an offer for sale under § 102(b)." . . . In so holding, we noted that Federal Circuit law, not state contract law, would control and that we would look to the Uniform Commercial Code ("UCC") for guidance as to whether a particular communication rose to the level of a "commercial offer for sale." . . . *[A]ccord Linear Tech.*, 275 F.3d at 1048, 61 USPQ2d at 1229-30 (following *Group One* and reversing the district court's invalidation under § 102(b) because the alleged activities did not constitute a contractual offer for sale under the UCC).

Micrel persists in its argument that *Pfaff* "indicates that commercial marketing triggers the on sale bar." (Supp. Br. 3).[2] But neither the holding in *Pfaff* nor its underlying reasoning support the "commercial marketing" standard advanced by Micrel. (Opp. Br. 14-17). Instead, this Court explicitly required that for the on-sale bar to be triggered, "the product must be the subject of a commercial offer for sale." 525 U.S. at 67. This Court has never held or suggested that commercial

2. In footnote 3 of its Supplemental Brief, Micrel quotes at length from the oral argument in *Pfaff*. That excerpt confirms that a commercial ***offer*** is a prerequisite for triggering the on-sale bar: If inventor "commercially advertises it ***for sale***" then "that would satisfy the on sale requirement" (emphasis supplied).

marketing activities alone are sufficient to trigger the on-sale bar. Indeed, no Court has ever defined a "commercial marketing" test for the on-sale bar.

Thus, Micrel has no basis for urging that *certiorari* should be granted because "this Court has not yet determined the meaning of the 'commercial marketing' prong. . . ." (Supp. Br. 6). There is not, and never has been, a "commercial marketing prong" of the on-sale analysis. And even under the totality of the circumstances test articulated by some Regional Circuits and the Federal Circuit in the past, in practice the decisions applying that test uniformly declined to find that an invention was on sale in the absence of a definite, contractual offer for sale. *E.g.*, *UMC Elecs.*, 816 F.2d at 656; *RCA Corp.*, 887 F.2d at 1062. (Opp. Br. 18-28).

Micrel complains that the requirement of a commercial offer for sale creates greater uncertainty, based at least in part on the Solicitor General's statement, discussing the Federal Circuit's decision in *Lacks*, that there may be variation from industry to industry in "whether the distribution of samples, advertising, or trade show activities place an invention 'on sale.'" (Supp. Br. 5, 9; SG Br. 15). Micrel's argument ignores the fact that within the industry in which the inventor/patent owner is employed, he or she will be familiar with the customs and practices of the industry and will understand whether his or her conduct is sufficient to place the invention on sale. This is a far cry from the vague uncertainties inherent to Micrel's "commercial marketing" test, or the discredited "totality of the circumstances" test. Micrel's approving quotation from *amicus* McKechnie's brief, to the effect that "niceties of offer and acceptance. . . . make no sense" in the patent context, falls of its own weight. Such "niceties" serve the interests of predictability and certainty in the Patent Law, as required by *Pfaff*, for the same reasons as they do in contract law. Just as it is important to empower parties to "cede and maintain control over final contract formation," so too is it vital to patent law

policies to allow the patentee to know with certainty when he or she must file a patent application.

Micrel cites an unpublished article that disparages the Federal Circuit (Supp. Br. 2), but the better view is that the Federal Circuit has properly invoked the traditional contractual requirements of an offer and acceptance to assure certainty in the on-sale bar analysis. *See* P.D. Sabido, *Group One, Ltd v. Hallmark Cards, Inc.: The § 102(b) On-Sale Bar Bright-Line Test of Pfaff v. Wells Electronics, Inc. Just Got Brighter*, 6 J. SMALL & EMERGING BUS. L. 583, 604 (Fall 2001) ("With Group One's holding, the court provides greater certainty to inventors on activities that constitute a § 102(b) offer for sale.").

Citing *Kock v. Quaker Oats Co.*, 681 F.2d 649, 652 (9th Cir. 1982), Micrel inexplicably argues that Section 102(b) was designed to accommodate the uncertainty of the totality of the circumstances test by providing a one year grace period for filing patent applications. (Supp. Br. 5). *Kock* provides no support for that notion, nor does any other reported case that LTC is aware of. True, the grace period provides a certain time limit of one year (prior to 1939, two years). But the potential uncertainty, which the holdings of *Pfaff* and *Group One* reduce, is when that grace period ***starts to run.***

Micrel raises a false concern when it speculates that the requirement of a commercial offer increases uncertainty for "others in the market seeking to use or compete with a commercialized invention." (Supp. Br. 6). The purpose of Section 102(b) is to create a date certain by which a patent application must be filed and to bar the patent if certain deadlines for filing are not met. Section 102(b) has little to do with allowing the public (and specifically, the patentee's competitors) to deduce whether or not a patent application has been filed. It is of no practical use to competitors to have specific knowledge as to the date by which an inventor must file his or her patent application, given that patent applications are maintained in

secrecy by the PTO for at least eighteen months after filing. Indeed, the inventor may elect to keep the application confidential throughout its pendency even after eighteen months. Whether or not informed of the deadline, the competitor will not know whether the inventor has filed an application until many months, and probably years, after the expiration of the time to file. 35 U.S.C. § 122.

Micrel confects a supposed contradiction by pointing out that the Solicitor General describes the difference between the "commercial marketing" and "formal offer" standards as insubstantial, while LTC states that the difference between these two standards is "critical." (Supp. Br. 7). Micrel misreads both briefs, confusing the ***practical effect*** of the law as actually applied in the past with the issue of how best to ***articulate*** the law in the future. The Solicitor General's brief ratified LTC's position by explaining that the *Group One* requirement of a commercial offer for sale "does not appear to have resulted in a dramatic change in the law," because the totality of the circumstances test, in practice, actually "focused on whether the inventor had made a 'definite offer' to sell the invention." (SG Br. 9, 10). This is precisely what LTC demonstrated in its opposition. (Opp. Br. 18-28). The "critical" difference that LTC also discusses is that the ***potential*** uncertainty incumbent in the "totality of circumstances" or "commercial marketing" test as proposed by Micrel is eliminated by the correct "commercial offer" test adopted by *Pfaff* and *Group One.* The Solicitor General and LTC are in agreement that the commercial offer for sale requirement announced in *Pfaff* and further refined in *Group One* are consistent with prior law, as actually applied to specific cases.

Nor is Micrel's assertion that in modern commerce, "the purchaser is the offeror, and the vendor is the offeree" a convincing reason to grant the Petition in this case. (*See* Supp. Br. 7, *citing Klocek v. Gateway, Inc.*, 104 F. Supp. 2d 1332, 1340 (D. Kan. 2000)). *Klocek* deals with the law surrounding

typical consumer transactions where an ordinary member of the public purchases a product off the shelf in a store. In that circumstance, state law typically characterizes the customer who brings a product to the checkout counter as making an offer to buy, which offer is accepted when the sale is rung up. That scenario has nothing to do with the facts of this case. LTC does not contend, and *Group One* should not be read to require, that an inventor who allows his or her invention to be placed on the shelf in a store, inviting offers from purchasers, would necessarily avoid the on-sale bar of Section 102(b). The Federal Circuit has not yet reached these circumstances in developing the law relating to the on-sale bar, and the issue is not raised by the present case.[3]

Nor does this case join issue as to the extent to which solicitations, including samples and product demonstrations or other sales-related information (e.g., pricing) prior to the critical date may constitute an offer for sale. Micrel erroneously argues that the lack of clarity on this point favors granting certiorari. (Supp. Br. 8-9). However, this case is not the vehicle for addressing that issue. At no point prior to the November 18, 1985 critical date did LTC distribute product samples or demonstrate the LT1070, the product alleged to have been on sale prior to the critical date, to customers. Pet. App. 39a-40a. Nor did LTC provide its independent sales force with pricing information for the LT1070 prior to the critical date, in either the United States or Europe. *Id.* at 49a. Any ambiguity in the law relating to distribution of product samples and pricing information must await resolution in a subsequent case where such an issue is properly raised by the facts.

3. The Solicitor General has amply demonstrated that Micrel overstates its concern that the Federal Circuit's

---

3. There is no pressing need to resolve this question, because in a normal consumer transaction of this type, the items displayed on a shelf in a store will have already been the subject of one or more sales in the distribution chain.

commercial offer for sale test will allow inventors to defer filing patent applications by promoting the invention and exploiting its commercial value without actually offering it for sale. (Supp. Br. 9-10). As the Solicitor General's brief points out, inventors generally seek patents quickly in order to obtain a competitive advantage, gain licensing revenues, and attract investment capital. Pressures associated with filing foreign patent applications likewise lead inventors to file U.S. applications earlier rather than later. (SG Br. 17-18). Micrel's alarmist scenario of an inventor engaged in pre-sale commercialization for many months or even years prior to placing the product on sale for the purpose of extending the time to file is totally unrealistic. In any event, today's marketplace, which is characterized by short product cycles and the desire to realize a profit as early as possible, would militate against Micrel's scenario.

CONCLUSION

For all of the foregoing reasons, as well as the reasons set forth in LTC's Brief in Opposition and in the Brief for the United States as Amicus Curiae, Micrel's petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT C. MORGAN
FISH & NEAVE
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

NORMAN H. BEAMER
Counsel of Record
MARK D. ROWLAND
GABRIELLE E. HIGGINS
PATRICIA E. CAMPBELL
FISH & NEAVE
525 University Avenue
Palo Alto, California 94301
(650) 617-4000

Attorneys for Respondent

APPENDIX

APPENDIX

Solicitor General's Recommendations, 1999-2003

Brief for U.S., No. 02-682, *Verizon Communications, Inc. v. Law Offices of Curtis v. Trinko, LLP* (recommending grant), *cert. granted*, 123 S. Ct. 1480 (2003).

Brief for U.S., No. 02-299, *Entergy Louisiana, Inc. v. Louisiana Public Serv. Comm'n* (recommending grant), *cert. granted*, 123 S. Ct. 964 (2003).

Brief for U.S., No. 01-1710, *Empire Blue Cross & Blue Shield v. Byrnes* (recommending grant), *cert. denied*, 123 S. Ct. 1015 (2003).

Brief for U.S., No. 01-1623, *In re Wischkaemper* (recommending denial), *cert. denied*, 123 S. Ct. 687 (2002).

Brief for U.S., No. 01-1605, *In re Taylor* (recommending denial), *cert. denied*, 123 S. Ct. 687 (2002).

Brief for U.S., No. 01-1317, *Attorney General of Canada v. R.J. Reynolds Tobacco Holdings, Inc.* (recommending denial), *cert. denied*, 123 S. Ct. 513 (2002).

Brief for U.S., No. 01-1179, *Bank of America, N.A. v. Abraham* (recommending denial), *cert. denied*, 123 S. Ct. 686 (2002).

Brief for U.S., No. 01-1231, *Connecticut Dep't of Public Safety v. Doe* (recommending grant), *cert. granted*, 535 U.S. 1077 (2002).

* Brief for U.S., No. 01-863, *Fin Control Systems Pty, Ltd. v. Surfco Hawaii* (recommending denial), *cert. denied*, 536 U.S. 939 (2002).

---

* Indicates patent case.

Appendix

Brief for U.S., No. 01-651, *Chase Manhattan Bank v. Traffic Stream (BVI) Infrastructure Ltd.* (recommending grant), *cert. granted*, 534 U.S. 1074 (2002).

Brief for U.S., No. 01-593, *Dole Food Co. v. Patrickson* (recommending grant), *cert. granted*, 536 U.S. 956 (2002).

Brief for U.S., No. 01-270, *Yellow Freight Sys., Inc. v. Michigan* (recommending grant), *cert. granted*, 534 U.S. 1112 (2002).

Brief for U.S., No. 01-188, *Pharm. Research & Mfrs. Of Am. V. Concannon* (recommending denial), *cert. granted*, 122 S. Ct. 2657 (2002).

Brief for U.S., No. 00-6029, *Ragsdale v. Wolverine World Wide, Inc.* (recommending denial), *cert. granted*, 533 U.S. 928 (2001).

Brief for U.S., No. 00-1860, *Memorial Hospitals Assoc. v. Humphrey* (recommending denial), *cert. denied*, 535 U.S. 1011 (2002).

Brief for U.S., No. 00-1842, *Statoil ASA v. HeereMac V.O.F.* (recommending denial), *cert. denied*, 534 U.S. 1127 (2002).

Brief for U.S., No. 00-1751, *Zelman v. Simmons-Harris* (recommending grant), *cert. granted*, 533 U.S. 976 (2001).

* Brief for U.S., No. 00-1543, *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, (recommending vacatur and remand), *cert. granted*, , 533 U.S. 915 (2001), *vacated and remanded*, 535 U.S. 722 (2002).

Brief for U.S., No. 00-1491, *John Deere Ins. Co. v. Nueva* (recommending denial), *cert. denied*, 534 U.S. 1127 (2002).

---

* Indicates patent case.

Appendix

Brief for U.S., No. 00-1406, *Chevron U.S.A., Inc. v. Echazabal* (recommending grant), *cert. granted*, 534 U.S. 991 (2001).

Brief for U.S., No. 00-1073, *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo* (recommending denial), *cert. granted*, 533 U.S. 927 (2001).

Brief for U.S., No. 00-1072, *Edelman v. Lynchburg College* (recommending grant), *cert. granted*, 533 U.S. 928 (2001).

Brief for U.S., No. 00-952, *Wis. Dep't of Health & Family Servs. v. Blumer* (recommending denial), *cert. granted*, 533 U.S. 927 (2001).

Brief for U.S., No. 00-720, *Chubb & Son, Inc. v. Asiana Airlines* (recommending denial), *cert. denied*, 533 U.S. 928 (2001).

Brief for U.S., No. 00-665, *Montemayor v. Corporate Health Ins.* (recommending denial), *cert. granted, vacated and remanded*, 536 U.S. 935 (2002).

Brief for U.S., No. 00-509, *Arons v. Office of Disciplinary Counsel of the Supreme Court of Delaware* (recommending denial), *cert. denied*, 532 U.S. 1065 (2001).

Brief for U.S., No. 00-289, *Yarnell v. Cuffley* (recommending grant), *cert. denied*, 532 U.S. 903 (2001).

* Brief for U.S., No. 00-249, *Atlantic Richfield Co. v. Union Oil Co. of California* (recommending denial), *cert. denied*, 531 U.S. 1183 (2001).

* Brief for U.S., No. 00-62, *CSU, L.L.C. v. Xerox Corp.* (recommending denial), *cert. denied*, 531 U.S. 1143 (2001).

* Indicates patent case.

Appendix

*Brief for U.S., No. 99-1996, *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.* (recommending denial), *cert. granted*, 531 U.S. 1143 (2001).

Brief for U.S., No. 99-1496, *Janakakis-Kostun v. Janakakis* (recommending denial), *cert. denied*, 531 U.S. 811 (2000).

Brief for U.S., No. 99-1489, *Raquel v. Education Mgmt. Corp.* (recommending grant), *cert. granted*, 531 U.S. 952 (2000).

Brief for U.S., No. 99-905, *Armstrong Surgical Center, Inc. v. Armstrong County Mem'l Hosp.* (recommending denial), *cert. denied*, 530 U.S. 1261 (2000).

Brief for U.S., No. 99-176, *Dass v. Caplinger* (recommending denial), *cert. denied*, 528 U.S. 876 (1999).

Brief for U.S., No. 98-9663, *Davis v. Hopper* (recommending denial), *cert. denied*, 528 U.S. 1114 (2000).

Brief for U.S., No. 98-8327, *Domingues v. State of Nevada* (recommending denial), *cert. denied*, 528 U.S. 963 (1999).

Brief for U.S., No. 98-1987, *Valdespino v. Alamo Heights Indep. Sch. Dist.* (recommending grant), *cert. denied*, 528 U.S. 1114 (2000).

Brief for U.S., No. 98-1971, *Robinson v. Admin. Comm. Of the Sea Ray Employees' Stock Ownership & Profit Sharing Plan* (recommending denial), *cert. denied*, 528 U.S. 1114 (2000).

Brief for U.S., No. 98-1836, *U.S. Healthcare Sys. of Pennsylvania, Inc. v. Pennsylvania Hosp. Ins. Co.* (recommending grant), *cert. granted*, 530 U.S. 1241 (2000).

* Indicates patent case.

Appendix

Brief for U.S., No. 98-1768, *Buckman Co. v. Plaintiff's Legal Comm.* (recommending grant), *cert. granted*, 530 U.S. 1273 (2000).

Brief for U.S., No. 98-1747, *Perez v. Pasadena Indep. Sch. Dist.* (recommending grant), *cert. denied*, 528 U.S. 1114 (2000).

Brief for U.S., No. 98-1628, *Salt River Project Agric. Improvement and Power Dist. v. Dawavendewa* (recommending denial), *cert. denied*, 528 U.S. 1098 (2000).

Brief for U.S., No. 98-1167, *Christensen v. Harris County* (recommending grant), *cert. granted*, 528 U.S. 926 (1999).

Brief for U.S., No. 98-1041, *Whitburn v. Addis* (recommending denial), *cert. denied*, 527 U.S. 1021 (1999).

Brief for U.S., No. 98-956, *Cannon v. Williams* (recommending grant), *cert. denied*, 525 U.S. 1123 (1999).

Brief for U.S., No. 98-512, *Davis v. Bush* (recommending grant), *cert. denied*, 526 U.S. 1003 (1999).